

SHB 2995 - H AMD TO H AMD (H-5172.1/18) **1463**

By Representative Maycumber

1 On page 42, after line 22 of the striking amendment, inserting the
2 following:

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4 **"Sec. 22.** RCW 70.94.151 and 2010 c 146 s 2 are each amended to
5 read as follows:

6 (1) The board of any activated authority or the department, may
7 classify air contaminant sources, by ordinance, resolution, rule or
8 regulation, which in its judgment may cause or contribute to air
9 pollution, according to levels and types of emissions and other
10 characteristics which cause or contribute to air pollution, and may
11 require registration or reporting or both for any such class or
12 classes. Classifications made pursuant to this section may be for
13 application to the area of jurisdiction of such authority, or the
14 state as a whole or to any designated area within the jurisdiction,
15 and shall be made with special reference to effects on health,
16 economic and social factors, and physical effects on property.

17 (2) Except as provided in subsection (3) of this section, any
18 person operating or responsible for the operation of air contaminant
19 sources of any class for which the ordinances, resolutions, rules or
20 regulations of the department or board of the authority, require
21 registration or reporting shall register therewith and make reports
22 containing information as may be required by such department or
23 board concerning location, size and height of contaminant outlets,
24 processes employed, nature of the contaminant emission and such
25 other information as is relevant to air pollution and available or
26 reasonably capable of being assembled. In the case of emissions of
27 greenhouse gases as defined in RCW 70.235.010 the department shall

1 adopt rules requiring reporting of those emissions. The department
2 or board may require that such registration or reporting be
3 accompanied by a fee, and may determine the amount of such fee for
4 such class or classes: PROVIDED, That the amount of the fee shall
5 only be to compensate for the costs of administering such
6 registration or reporting program which shall be defined as initial
7 registration and annual or other periodic reports from the source
8 owner providing information directly related to air pollution
9 registration, on-site inspections necessary to verify compliance
10 with registration requirements, data storage and retrieval systems
11 necessary for support of the registration program, emission
12 inventory reports and emission reduction credits computed from
13 information provided by sources pursuant to registration program
14 requirements, staff review, including engineering or other reliable
15 analysis for accuracy and currentness, of information provided by
16 sources pursuant to registration program requirements, clerical and
17 other office support provided in direct furtherance of the
18 registration program, and administrative support provided in
19 directly carrying out the registration program: PROVIDED FURTHER,
20 That any such registration made with either the board or the
21 department shall preclude a further registration and reporting with
22 any other board or the department, except that emissions of
23 greenhouse gases as defined in RCW 70.235.010 must be reported as
24 required under subsection (5) of this section.

25 All registration program and reporting fees collected by the
26 department shall be deposited in the air pollution control account.
27 All registration program fees collected by the local air authorities
28 shall be deposited in their respective treasuries.

29 (3) If a registration or report has been filed for a grain
30 warehouse or grain elevator as required under this section,
31 registration, reporting, or a registration program fee shall not,
32 after January 1, 1997, again be required under this section for the
33 warehouse or elevator unless the capacity of the warehouse or
34 elevator as listed as part of the license issued for the facility

1 has been increased since the date the registration or reporting was
2 last made. If the capacity of the warehouse or elevator listed as
3 part of the license is increased, any registration or reporting
4 required for the warehouse or elevator under this section must be
5 made by the date the warehouse or elevator receives grain from the
6 first harvest season that occurs after the increase in its capacity
7 is listed in the license.

8 This subsection does not apply to a grain warehouse or grain
9 elevator if the warehouse or elevator handles more than ten million
10 bushels of grain annually.

11 (4) For the purposes of subsection (3) of this section:

12 (a) A "grain warehouse" or "grain elevator" is an establishment
13 classified in standard industrial classification (SIC) code 5153 for
14 wholesale trade for which a license is required and includes, but is
15 not limited to, such a licensed facility that also conducts cleaning
16 operations for grain;

17 (b) A "license" is a license issued by the department of
18 agriculture licensing a facility as a grain warehouse or grain
19 elevator under chapter 22.09 RCW or a license issued by the federal
20 government licensing a facility as a grain warehouse or grain
21 elevator for purposes similar to those of licensure for the facility
22 under chapter 22.09 RCW; and

23 (c) "Grain" means a grain or a pulse.

24 (5)(a) The department shall adopt rules requiring persons to
25 report emissions of greenhouse gases as defined in RCW 70.235.010
26 where those emissions from a single facility, source, or site, or
27 from fossil fuels sold in Washington by a single supplier meet or
28 exceed ten thousand metric tons of carbon dioxide equivalent
29 annually. The department may phase in the requirement to report
30 greenhouse gas emissions until the reporting threshold in this
31 subsection is met, which must occur by January 1, 2012. In addition,
32 the rules must require that:

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1 (i) Emissions of greenhouse gases resulting from the combustion
2 of fossil fuels be reported separately from emissions of greenhouse
3 gases resulting from the combustion of biomass;

4 (ii) Reporting will start in 2010 for 2009 emissions. Each
5 annual report must include emissions data for the preceding calendar
6 year and must be submitted to the department by October 31st of the
7 year in which the report is due. However, starting in 2011, a person
8 who is required to report greenhouse gas emissions to the United
9 States environmental protection agency under 40 C.F.R. Part 98, as
10 adopted on September 22, 2009, must submit the report required under
11 this section to the department concurrent with the submission to the
12 United States environmental protection agency. Except as otherwise
13 provided in this section, the data for emissions in Washington and
14 any corrections thereto that are reported to the United States
15 environmental protection agency must be the emissions data reported
16 to the department; and

17 (iii) Emissions of carbon dioxide associated with the complete
18 combustion or oxidation of liquid motor vehicle fuel, special fuel,
19 or aircraft fuel that is sold in Washington where the annual
20 emissions associated with that combustion or oxidation equal or
21 exceed ten thousand metric tons be reported to the department. Each
22 person who is required to file periodic tax reports of motor vehicle
23 fuel sales under RCW 82.36.031 or special fuel sales under RCW
24 82.38.150, or each distributor of aircraft fuel required to file
25 periodic tax reports under RCW 82.42.040 must report to the
26 department the annual emissions of carbon dioxide from the complete
27 combustion or oxidation of the fuels listed in those reports as sold
28 in the state of Washington. The department shall not require
29 suppliers to use additional data to calculate greenhouse gas
30 emissions other than the data the suppliers report to the department
31 of licensing. The rules may allow this information to be aggregated
32 when reported to the department. The department and the department
33 of licensing shall enter into an interagency agreement to ensure
34 proprietary and confidential information is protected if the

1 departments share reported information. Any proprietary or
2 confidential information exempt from disclosure when reported to the
3 department of licensing is exempt from disclosure when shared by the
4 department of licensing with the department under this provision.

5 (b)(i) Except as otherwise provided in this subsection, the
6 rules adopted by the department under (a) of this subsection must be
7 consistent with the regulations adopted by the United States
8 environmental protection agency in 40 C.F.R. Part 98 on September
9 22, 2009.

10 (ii) The department may by rule include additional gases to the
11 definition of "greenhouse gas" in RCW 70.235.010 only if the gas has
12 been designated as a greenhouse gas by the United States congress or
13 by the United States environmental protection agency. Prior to
14 including additional gases to the definition of "greenhouse gas" in
15 RCW 70.235.010, the department shall notify the appropriate
16 committees of the legislature. Decisions to amend the rule to
17 include additional gases must be made prior to December 1st of any
18 year and the amended rule may not take effect before the end of the
19 regular legislative session in the next year.

20 (iii) The department may by rule exempt persons who are required
21 to report greenhouse gas emissions to the United States
22 environmental protection agency and who emit less than ten thousand
23 metric tons carbon dioxide equivalent annually.

24 (iv) The department must establish a methodology for persons who
25 are not required to report under this section to voluntarily report
26 their greenhouse gas emissions.

27 (c) The department shall review and if necessary update its
28 rules whenever the United States environmental protection agency
29 adopts final amendments to 40 C.F.R. Part 98 to ensure consistency
30 with federal reporting requirements for emissions of greenhouse
31 gases. However, the department shall not amend its rules in a manner
32 that conflicts with (a) of this subsection.

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1 (d) The department shall share any reporting information
2 reported to it with the local air authority in which the person
3 reporting under the rules adopted by the department operates.

4 (e) The fee provisions in subsection (2) of this section apply
5 to reporting of emissions of greenhouse gases. Persons required to
6 report under (a) of this subsection who fail to report or pay the
7 fee required in subsection (2) of this section are subject to
8 enforcement penalties under this chapter. The department shall
9 enforce the reporting rule requirements unless it approves a local
10 air authority's request to enforce the requirements for persons
11 operating within the authority's jurisdiction. However, neither the
12 department nor a local air authority approved under this section are
13 authorized to assess enforcement penalties on persons required to
14 report under (a) of this subsection until six months after the
15 department adopts its reporting rule in 2010.

16 (f) The energy facility site evaluation council shall,
17 simultaneously with the department, adopt rules that impose
18 greenhouse gas reporting requirements in site certifications on
19 owners or operators of a facility permitted by the energy facility
20 site evaluation council. The greenhouse gas reporting requirements
21 imposed by the energy facility site evaluation council must be the
22 same as the greenhouse gas reporting requirements imposed by the
23 department. The department shall share any information reported to
24 it from facilities permitted by the energy facility site evaluation
25 council with the council, including notice of a facility that has
26 failed to report as required. The energy facility site evaluation
27 council shall contract with the department to monitor the reporting
28 requirements adopted under this section.

29 (g) The inclusion or failure to include any person, source,
30 classes of persons or sources, or types of emissions of greenhouse
31 gases into the department's rules for reporting under this section
32 does not indicate whether such a person, source, or category is
33 appropriate for inclusion in state, regional, or national greenhouse
34 gas reduction programs or strategies. Furthermore, aircraft fuel

1 purchased in the state may not be considered equivalent to aircraft
2 fuel combusted in the state.

3 (h)(i) The definitions in RCW 70.235.010 apply throughout this
4 subsection (5) unless the context clearly requires otherwise.

5 (ii) For the purpose of this subsection (5), the term "supplier"
6 includes: (A) A motor vehicle fuel supplier or a motor vehicle fuel
7 importer, as those terms are defined in RCW 82.36.010; (B) a special
8 fuel supplier or a special fuel importer, as those terms are defined
9 in RCW 82.38.020; and (C) a distributor of aircraft fuel, as those
10 terms are defined in RCW 82.42.010.

11 (iii) For the purpose of this subsection (5), the term "person"
12 includes: (A) An owner or operator, as those terms are defined by
13 the United States environmental protection agency in its mandatory
14 greenhouse gas reporting regulation in 40 C.F.R. Part 98, as adopted
15 on September 22, 2009; and (B) a supplier.

16 (6) Any rule regulating greenhouse gas emissions of producers of
17 agricultural commodities or food products must be consistent with
18 section 24 of this act. This subsection does not provide authority
19 to regulate greenhouse gas emissions by rule.

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21 **Sec. 23.** RCW 70.94.331 and 1991 c 199 s 710 are each amended to
22 read as follows:

23 (1) The department shall have all the powers as provided in RCW
24 70.94.141.

25 (2) The department, in addition to any other powers vested in it
26 by law after consideration at a public hearing held in accordance
27 with chapters 42.30 and 34.05 RCW shall:

28 (a) Adopt rules establishing air quality objectives and air
29 quality standards;

30 (b) Adopt emission standards which shall constitute minimum
31 emission standards throughout the state. An authority may enact more
32 stringent emission standards, except for emission performance
33 standards for new woodstoves and opacity levels for residential
34 solid fuel burning devices which shall be statewide, but in no event

1 may less stringent standards be enacted by an authority without the
2 prior approval of the department after public hearing and due notice
3 to interested parties;

4 (c) Adopt by rule air quality standards and emission standards
5 for the control or prohibition of emissions to the outdoor
6 atmosphere of radionuclides, dust, fumes, mist, smoke, other
7 particulate matter, vapor, gas, odorous substances, or any
8 combination thereof. Such requirements may be based upon a system of
9 classification by types of emissions or types of sources of
10 emissions, or combinations thereof, which it determines most
11 feasible for the purposes of this chapter. However, an industry, or
12 the air pollution control authority having jurisdiction, can choose,
13 subject to the submittal of appropriate data that the industry has
14 quantified, to have any limit on the opacity of emissions from a
15 source whose emission standard is stated in terms of a weight of
16 particulate per unit volume of air (e.g., grains per dry standard
17 cubic foot) be based on the applicable particulate emission standard
18 for that source, such that any violation of the opacity limit
19 accurately indicates a violation of the applicable particulate
20 emission standard. Any alternative opacity limit provided by this
21 section that would result in increasing air contaminants emissions
22 in any nonattainment area shall only be granted if equal or greater
23 emission reductions are provided for by the same source obtaining
24 the revised opacity limit. A reasonable fee may be assessed to the
25 industry to which the alternate opacity standard would apply. The
26 fee shall cover only those costs to the air pollution control
27 authority which are directly related to the determination on the
28 acceptability of the alternate opacity standard, including testing,
29 oversight and review of data.

30 (3) The air quality standards and emission standards may be for
31 the state as a whole or may vary from area to area or source to
32 source, except that emission performance standards for new
33 woodstoves and opacity levels for residential solid fuel burning
34 devices shall be statewide, as may be appropriate to facilitate the

1 accomplishment of the objectives of this chapter and to take
2 necessary or desirable account of varying local conditions of
3 population concentration, the existence of actual or reasonably
4 foreseeable air pollution, topographic and meteorologic conditions
5 and other pertinent variables.

6 (4) The department is directed to cooperate with the appropriate
7 agencies of the United States or other states or any interstate
8 agencies or international agencies with respect to the control of
9 air pollution and air contamination, or for the formulation for the
10 submission to the legislature of interstate air pollution control
11 compacts or agreements.

12 (5) The department is directed to conduct or cause to be
13 conducted a continuous surveillance program to monitor the quality
14 of the ambient atmosphere as to concentrations and movements of air
15 contaminants and conduct or cause to be conducted a program to
16 determine the quantity of emissions to the atmosphere.

17 (6) The department shall enforce the air quality standards and
18 emission standards throughout the state except where a local
19 authority is enforcing the state regulations or its own regulations
20 which are more stringent than those of the state.

21 (7) The department shall encourage local units of government to
22 handle air pollution problems within their respective jurisdictions;
23 and, on a cooperative basis provide technical and consultative
24 assistance therefor.

25 (8) The department shall have the power to require the addition
26 to or deletion of a county or counties from an existing authority in
27 order to carry out the purposes of this chapter. No such addition or
28 deletion shall be made without the concurrence of any existing
29 authority involved. Such action shall only be taken after a public
30 hearing held pursuant to the provisions of chapter 34.05 RCW.

31 (9) The department shall establish rules requiring sources or
32 source categories to apply reasonable and available control methods.
33 Such rules shall apply to those sources or source categories that
34 individually or collectively contribute the majority of statewide

1 air emissions of each regulated pollutant. The department shall
2 review, and if necessary, update its rules every five years to
3 ensure consistency with current reasonable and available control
4 methods. The department shall have adopted rules required under this
5 subsection for all sources by July 1, 1996.

6 (10) Any rule regulating greenhouse gas emissions of producers
7 of agricultural commodities or food products must be consistent with
8 section 24 of this act. This subsection does not provide authority
9 to regulate greenhouse gas emissions by rule.

10 For the purposes of this section, "reasonable and available
11 control methods" shall include but not be limited to, changes in
12 technology, processes, or other control strategies.

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14 NEW SECTION. Sec. 24. A new section is added to chapter 70.94
15 RCW to read as follows:

16 (1) This section does not provide authority to regulate
17 greenhouse gas emissions by rule.

18 (2) If a rule is created that regulates greenhouse gas emissions
19 of agricultural activities and food processing, the producers of
20 agricultural commodities as defined in RCW 15.66.010 or producers of
21 food products as defined in RCW 69.04.008 may request the department
22 to calculate greenhouse gas emissions in a comparison of a specified
23 competitor's agricultural commodity or food product imported from
24 out-of-state against the same type of agricultural commodity if
25 obtained in the state. This calculation will include the gross
26 estimated carbon emissions, including transportation of the
27 agricultural commodity or food product to the state; the estimated
28 difference in carbon usage if the agricultural commodity or food
29 product was obtained within the state versus the comparable out-of-
30 state agricultural commodity or food product, including
31 transportation. Factors in the calculation may include labor,
32 business and occupation taxes, energy use of vehicles involved in
33 production or transport, and clean air credit purchasing.

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1 (3) If the department determines that the greenhouse gas
2 emissions from the out-of-state produced agricultural commodity or
3 food product exceed the amount of greenhouse gas emissions of
4 producing the in-state agricultural commodity or food product, the
5 department must provide regulatory relief for the producer of the
6 agricultural commodity or food product to assure that the producer
7 remains competitive in the global market. This includes providing an
8 exemption from any rules addressing greenhouse gas emissions,
9 including any that limit emissions, price emissions, require
10 purchase of credits, or add additional costs to the production of
11 the agricultural commodity or food product.

12 (4) The producer of the agricultural commodity or food product
13 may provide the department with a comparison from a reputable
14 greenhouse gas emissions expert requesting regulatory relief in lieu
15 of requesting the department to make the calculation in subsection
16 (2) of this section.

17 (5) The department must report what regulatory relief the
18 department granted to producers pursuant to this section to the
19 appropriate committees of the legislature by December 1st of each
20 year.

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22 NEW SECTION. **Sec. 25.** A new section is added to chapter 43.31
23 RCW to read as follows:

24 The department in consultation with the department of ecology,
25 transportation-industry experts, and other business related interests
26 must create a greenhouse gas emissions shipping modeling tool that
27 allows a producer of a product to estimate the amount of greenhouse
28 gas emissions produced when importing products and goods from out-of-
29 state locations. The model may address more than transportation
30 emissions, including differences in energy sources, environmental
31 regulations, and whether the product was created using emission
32 reducing technology that is comparable to state requirements."

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1 Renumber the remaining sections consecutively and correct any
2 internal references accordingly.

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EFFECT: Allows producers of agricultural commodities or food products to request the Department of Ecology (Department) use a specific calculation for greenhouse gas emissions under any rule regulating greenhouse gas emissions of agricultural activities or food processing. Requires that the calculation compare a specified competitor's agricultural commodity or food product imported from out-of-state against the same type of agricultural commodity if obtained in the state, and provide regulatory relief if the out-of-state emissions exceed the in-state emissions. Requires the Department to report the regulatory relief provided annually to the Legislature. Requires the Department of Commerce to create a greenhouse gas emissions shipping modeling tool that allows producers to estimate emissions produced when importing products and goods from out-of-state locations.

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